

CONTRACT #7
RFS # 317.05-052

**Department of Finance &
Administration
Division of Accounts**

VENDOR:
**National Association of State
Auditors, Comptrollers and
Treasurers (NASACT)**



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF ACCOUNTS
21ST FLOOR, WILLIAM R. SNODGRASS TENNESSEE TOWER
312 - 8TH AVENUE, NORTH
NASHVILLE, TENNESSEE 37243-0293

DAVE GOETZ
COMMISSIONER

RECEIVED

AUG 31 2005

To: Jim White, Director
Fiscal Review Committee

From: Jan I. Sylvis *Jan I. Sylvis*
Chief of Accounts

FISCAL REVIEW

Subject: Request for review of non-competitive negotiation for benchmarking services

Date: August 30, 2005

The Department of Finance and Administration would like to procure benchmarking services through the National Association of State Auditors, Comptrollers, and Treasurers (NASACT). NASACT has competitively acquired a national benchmarking firm (Hackett Group) to develop a state government database of metrics for administrative functional areas (finance, HR/Payroll). No such state government database currently exists. During that procurement process the benchmarking firm also provided additional unsolicited benchmarking services for procurement and information systems processes.

NASACT determined that such a database does not currently exist because there has never been a cooperative effort amongst the states' finance officials to develop one. This is the first time that the states' finance officials have agreed to develop such a database that can be comparative to the private sector database.

The state should procure the benchmarking services through NASACT so that it may participate in the building and use of the comparative state benchmark database, as well as obtaining an analysis of its administrative metrics. While another benchmarking company could provide a survey of some of our administrative services and thus a variety of metrics, it could not provide a comparison of other states' benchmark metrics without using the common database that is being built by the NASACT organization. The benefit of using other states' metrics as a comparison will help the state determine best practices within its industry - state government.

Benchmarking firms have traditionally worked with private sector companies and have developed extensive databases of best practices that relate to private sector business functional areas. One of NASACT's primary goals is to provide an opportunity for state financial officials to share knowledge. When one of its member states went through a benchmarking process prior to its installation of a major computer system, NASACT recognized the benefit to be gained from building a state government database similar to the private sector that could be customized for state use.

The State of Tennessee is embarking on the replacement of many of its major administrative systems (accounting, payroll, HR, and procurement) with an integrated system called an enterprise resource planning (ERP) system. State management is aware of many areas that need improvement as we implement a new system. However, a comprehensive review of our administrative processes would highlight all areas where improvement is needed so that they may be addressed in the new system. Once the system is installed and running smoothly another benchmark would need to be taken to determine how effectively the state and its system integrator addressed the identified improvement areas. Not only would the state receive comparisons with other states' processes, but it would also receive comparisons with world-class private sector organizations' administrative processes.

If possible, we would like to make a presentation of our request at the September 14, 2005 meeting of the Fiscal Review Contracts Subcommittee.

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A REQUEST CAN NOT BE CONSIDERED IF INFORMATION PROVIDED IS INCOMPLETE, NON-RESPONSIVE, OR DOES NOT CLEARLY ADDRESS EACH OF THE REQUIREMENTS INDIVIDUALLY AS REQUIRED.

RFS #

317.05-052

STATE AGENCY NAME :

Finance and Administration

SERVICE CAPTION :

Benchmarking administrative functions

PROPOSED CONTRACTOR :

National Association of State Auditors, Comptrollers and Treasurers (NASACT)

CONTRACT START DATE :

(if date is < 60 days after F&A receipt, attach required explanation)

September 15, 2005

LATEST POSSIBLE END DATE :

(including ALL options to extend)

September 14, 2010

TOTAL MAXIMUM COST :

(including ALL options to extend)

\$860,000

APPROVAL CRITERIA :

(select one)



use of Non-Competitive Negotiation is in the best interest of the state



only one uniquely qualified service provider able to provide the service

ADDITIONAL REQUIRED REQUEST DETAILS BELOW (address each item immediately following the requirement text)

(1) description of service to be acquired :

NASACT has competitively acquired a national benchmarking firm (Hackett Group) to develop a state government database of metrics for administrative functional areas (finance, HR/Payroll). No such state government database currently exists. During that procurement process the benchmarking firm also provided additional unsolicited benchmarking services for procurement and information systems processes. Benchmarking firms have traditionally worked with private sector companies and have developed extensive databases of best practices that relate to private sector business functional areas. One of NASACT's primary goals is to provide an opportunity for state financial officials to share knowledge. When one of its member states went through a benchmarking process prior to its installation of a major computer system, NASACT recognized the benefit to be gained from building a state government database similar to the private sector that could be customized for state use. The service to be provided is a benchmarking survey conducted of the State of Tennessee's administrative processes to identify our state's metrics and compare them to other states within the NASACT database and also with the private sector. Hackett will also provide an analysis of the results.

(2) explanation of the need for or requirement placed on the procuring agency to acquire the service :

The State of Tennessee is embarking on the replacement of many of its major administrative systems (accounting, payroll, HR, and procurement) with an integrated system called an enterprise resource planning (ERP) system. State management is aware of many areas that need improvement as we implement a new system. However, a comprehensive review of our administrative processes would highlight all areas of improvement so that they may be addressed in the new system. Once the system is installed and running

smoothly another benchmark would need to be taken to determine how effectively the state and its system integrator addressed the identified improvement areas. Not only would the state receive comparisons with other states' processes, but it would also receive comparisons with world-class private sector organizations' administrative processes.

(3) explanation of whether the service was ever bought by the procuring agency in the past, and if so, what method was used to acquire it :

This service has never been bought by Finance and Administration.

(4) name and address of the proposed contractor's principal owner(s) :
(not required if proposed contractor is a state education institution)

NASACT, 2401 Regency Road, Suite 302, Lexington, KY 40503-2914

(5) evidence that the proposed contractor has experience in providing the service and evidence of the length of time the contractor has provided service :

NASACT went through a competitive process via RFP to procure its contract. NASACT contracted with The Hackett Group, which has been benchmarking organizations in all administrative areas since 1992 and has a current database of 3,300 benchmarks. The Hackett Group is a wholly-owned subsidiary of Answerthink, Inc, 1001 Brickell Bay Drive, Suite 3000, Miami, FL 33131.

(6) documentation of OIR endorsement of the Non-Competitive procurement request :
(required only if the subject service involves information technology)

select one:

☐

Documentation Not Applicable to this Request

☒

Documentation Attached to this Request

(7) documentation of Department of Personnel endorsement of the Non-Competitive procurement request :
(required only if the subject service involves training for state employees)

select one:

☒

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

(8) description of procuring agency efforts to identify reasonable, competitive, procurement alternatives rather than to use non-competitive negotiation :

NASACT determined that such a database does not currently exist because there has never been a cooperative effort amongst the states' finance officials to develop one. This is the first time that the states' finance officials have agreed to develop such a database that can be comparative to the private sector database.

(9) justification of why the state should acquire the service through Non-Competitive Negotiation rather than through a competitive process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

The state should procure the benchmarking services through NASACT so that it may participate in the building and use of the comparative state benchmark database. While another benchmarking company could provide a survey of some of our administrative services and thus a variety of metrics, it could not provide a comparison of other states' benchmark metrics without using the common database that is being built by the NASACT organization. The benefit of using other states metrics as a comparison will help the state determine best practices within its industry - state government.

AGENCY HEAD REQUEST SIGNATURE:

(must be signed by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR — signature by an authorized signatory will be accepted only in documented exigent circumstances)

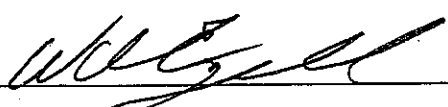
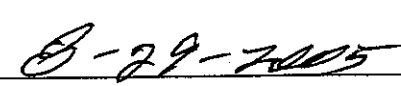
SIGNATURE DATE:

8-31-05



STATE OF TENNESSEE

FAX TRANSMITTAL

TO:	Bill Ezell, Chief Executive Officer Office for Information Resources	FAX # 532-0471
FROM:	Rhonda Hicks	FAX # 532.2332
DATE:	August 29, 2005	
RFS#	317.05-052	
RE:	OIR Procurement Endorsement Documentation for — BENCHMARKING SERVICES	
NUMBER OF FAX PAGES (INCLUDING COVER): 1		
<p>The proposed, service procurement documents referenced above are hereby forwarded to the Office for Information Resources (OIR) for review. The subject scope of services appears to include information systems services or information technology support activities.</p> <p>This communication seeks to ensure that OIR is aware of the procurement and has an opportunity to review the matter to determine whether OIR is supportive. Please indicate OIR endorsement of the procurement described by signature below and return this communication at your earliest convenience (note the return FAX number above).</p> <p>If you have any questions or concerns about this matter, please call Rhonda Hicks at 741.9795.</p> <p>Thank you for your help.</p> <p>Attachment</p>		
OIR ENDORSES THE SUBJECT PROCUREMENT REQUEST		
		
Office for Information Resources		Date

CONTRACT SUMMARY SHEET

8-8-05

RFS #		Contract #	
317.05-055			
State/Agency		State/Agency/Division	
Finance and Administration		Division of Accounts	
Contractor Name		Contractor ID# (FEIN or SSN)	
National Association of State Auditors, Comptrollers and Treasurers (NASACT)		<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 611102935 00	
Service Description			
Benchmarking Services			
Contract BEGIN Date	Contract END Date	Subrecipient or Vendor?	CFDA #
1-Oct-05	30-Sep-10	Vendor	
Mark if Statement is TRUE			
<input checked="" type="checkbox"/> Contractor is on STARS as required		<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts as required	
Allotment Code	Cost Center	Object Code	Fund
317.05	4805	083	12
FY	State	Federal	Interdepartmental
2006			\$ 350,000.00
2007			\$ 80,000.00
2008			\$ 20,000.00
2009			\$ 30,000.00
2010			\$ 350,000.00
2011			\$ 30,000.00
TOTAL	\$ -	\$ -	\$ 860,000.00
COMPLETE FOR AMENDMENTS ONLY		State/Agency/Fiscal Contact & Telephone	
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Rhonda Hicks -- 741.9795
			State Agency Budget Officer Approval
TOTAL	\$ -	\$ -	
End Date			
Contractor Ownership			
<input type="checkbox"/> African American	<input type="checkbox"/> Disabled	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business <input checked="" type="checkbox"/> NOT minority/disadvantaged
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—
Contractor Selection Method			
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Procurement Method	
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Government	<input checked="" type="checkbox"/> Other	
Procurement Process Summary			
Non-Competitive Contract Request			

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CONTRACT BETWEEN THE STATE OF TENNESSEE, DEPARTMENT OF FINANCE AND ADMINISTRATION AND THE NATIONAL ASSOCIATION OF STATE AUDITORS, COMPTROLLERS, AND TREASURERS

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and The National Association of State Auditors, Comptrollers, and Treasurers, hereinafter referred to as the "Contractor," is for the provision of benchmarking services, as further defined in the "SCOPE OF SERVICES."

The Contractor is non-profit corporation. The Contractor's address is:

2401 Regency Road, Suite 302
Lexington, KY 40503

The Contractor's place of incorporation or organization is Kentucky.

A. SCOPE OF SERVICES:

The purpose of this contract is for the Contractor to provide through its subcontractor(s) an assessment of the State's administrative processes and creation of a database of state governments' metrics with which each state may compare its performance as a whole and the performance of its individual agencies. Determining the baselines for key administrative processes will provide current performance metrics and the ability to measure on-going improvements in existing human resource/payroll, financial management, procurement and information technology rules and processes. In addition, comparing these business processes and services with world-class trends and emerging best practices will provide timely and helpful advice on steps that can be taken to achieve both quick hits and long-term improvements in the State's administrative processes.

- A.1. The Contractor shall provide a proven process and toolset to establish high-level baseline measurements of state agencies' human resource/payroll, financial management, procurement and information technology (IT) processes.

The Contractor shall provide a comparison of the results of the baseline measures against established benchmarks for state government and private sector human resource/payroll, financial management, procurement and IT, and recognized best practices.

Results from the baseline measures and benchmark comparisons will be used to identify:

- Current human resource/payroll, financial management, procurement and IT processes that are overly complex or cumbersome.
- Missing or inadequate functionality in statewide information systems that support the human resource/payroll, financial management, procurement and IT processes.
- Best practices in human resource/payroll management, financial management, procurement and IT processes from the public or private sector.
- A means to make quantifiable assessments over time of the success of systems and process improvements.

The Contractor shall provide a report and presentation to the State that includes the results of the baseline measurements, benchmark comparisons, and a prioritized list of recommendations to assist the State in achieving the results listed above for the state level and the state agency level.

The Contractor shall provide a benchmarking tool that will be distributed to all state participants in the benchmarking project(s). This tool will be used to evaluate the content of the state's benchmarking project(s).

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Follow-up measurements and benchmark comparisons of human resource/payroll, financial management, procurement and IT processes will be performed at a time deemed appropriate by the State once the State of Tennessee's Enterprise Resource Planning project has been implemented and has become stable.

Each benchmark provides:

- Unlimited State agency participation (to be determined by the State)
- Single report to the State, with state agency comparisons on selected high level metrics (i.e. finance cost as a percent of spend")
- Access to online data collection tools and final results data
- Onsite executive interviews, draft review and final presentation

A.2. At the State's option, an individual state agency may request a separate benchmark(s). If this separate benchmark is requested, the Contractor shall provide such benchmarking which will include a separate benchmark report (which includes core set of analysis and comparisons on key metrics) and onsite briefing on results (which includes preparation and executive phone interview). The State may request an individual state agency benchmarking of the separate benchmark report without the onsite briefing and the Contractor shall provide the separate benchmark report.

A.3. The Contractor shall provide an annual membership to the Executive Advisory Program. This Executive Advisory Program includes the following areas:

- Finance Executive Advisory Program (functional)
- IT Executive Advisory Program (functional)
- Payroll Advisory Services (process)

The annual membership at minimum provides:

- Book of Numbers
- World-class progress report (online tracking of benchmarking results)
- Unlimited advisory inquiry
- Attendance to best practices workshop
- Onsite executive briefing on world-class performance
- Access to functional best practices

The State shall purchase the annual membership for a minimum of three (3) years during the term of this Contract.

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing on October 1, 2005 and ending on September 30, 2010. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed eight hundred sixty thousand dollars (\$860,000). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the

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Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. **Compensation Firm.** The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. **Payment Methodology.** The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

<u>HR/Payroll, Finance, Procurement or IT Benchmark</u>	<u>Price Per Benchmark</u>
1 benchmark	\$80,000
2 benchmarks	\$72,000
3 benchmarks	\$70,000
4 benchmarks	\$68,000

Executive Advisory Programs annual membership (including Finance Executive Advisory Program (functional), IT Executive Advisory Program (functional), Payroll Advisory Services (process))	\$60,000
Optional Individual State Agency Benchmark Function:	
Separate Benchmark Report	\$ 2,500
Onsite Briefing on Results	\$ 7,500

The Contractor shall submit ~~monthly~~ invoices for completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. **Travel Compensation.** The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. **Payment of Invoice.** The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. **Invoice Reductions.** The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. **Deductions.** The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of

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Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

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- D.8. **Records.** The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. **Monitoring.** The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. **Progress Reports.** The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. **Strict Performance.** Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. **Independent Contractor.** The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.13. **State Liability.** The State shall have no liability except as specifically provided in this Contract.
- D.14. **Force Majeure.** The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. **State and Federal Compliance.** The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under ***Tennessee Code Annotated***, Sections 9-8-101 through 9-8-407.
- D.17. **Completeness.** This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

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- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Jan Sylvis

Chief of Accounts

Department of Finance and Administration

312 8th Avenue North, 21st Floor Tennessee Tower, Nashville, TN 37243

615.741.2382

615. 532.8532 fax

The Contractor:

Pat O'Connor

Program Manager

National Association of State Auditors, Comptrollers, and Treasurers

2401 Regency Road, Suite 302, Lexington, Kentucky 40503

859-276-1147

859-278-0507 fax

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Publicity. The Contractor agrees to submit to the State all advertising and publicity matters relating to this Contract which, in Contractor's judgment, the State's name can be implied or is

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specifically mentioned. The Contractor shall not approve or given written consent to use such advertising and publicity matters without the prior written consent of the State.

- E.5. Date/Time Hold Harmless. As required by ***Tennessee Code Annotated***, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.
- E.6. Contractor Limitation of Liability. The Contractor's liability on damages for negligence shall be limited to two times the maximum liability of this Contract, as stated in Section C.1. The limitation of liability as set forth in this section does not apply to liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct. The State will not indemnify the Contractor damages caused by the Contractor's own actions or negligence, or those of third parties.

IN WITNESS WHEREOF:

THE NATIONAL ASSOCIATION OF STATE AUDITORS, COMPTROLLERS, AND TREASURERS:

Kinney Poynter, Executive Director for NASACT

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury

Date